

Office of the Presiding Officers
Military Commission

April 27, 2006

SUBJECT: Presiding Officers Memorandum (POM) # 19: *Amicus Curiae* Briefs

1. **Introduction.** The Presiding Officers are not aware of any historical or legal precedent that requires or prohibits a Military Commission's consideration of an *amicus curiae* brief. An *amicus* brief, that logically addresses an important matter not previously considered by the Commission, or addresses an important matter in a way that another brief filed with the Commission does not, might be of benefit to the Commission. Briefs that do not meet this standard would not assist the Commission.

2. **Submitting *amicus* briefs.** A person individually, or on behalf of an organization or entity, may provide an *amicus* brief to the Chief Clerk for Military Commissions by sending the brief as an attachment to the following email address: CCMC@dodgc.osd.mil. The person submitting the brief must meet the following qualifications, and such qualifications shall be stated in the first paragraph of the brief.

a. The submitter is an attorney who is licensed to practice before the highest court of any State of the United States or the District of Columbia.

b. If the submitter is a party to any Commission case in any capacity, has an attorney-client relationship with any person whose case has been referred to a Military Commission under the President's Military Order of November 13, 2001, is currently or is seeking to be habeas counsel for any such person, or is currently or is seeking to be next-friend for such person, the submitter must so state and further state the submission is only to be considered for its value as an *amicus* brief and not for any other purpose to include as a brief on behalf of any specific party to any Commission proceeding.

c. The submitter certifies, by submitting the brief, that he or she asserts his or her good faith belief as a licensed attorney that the law is accurately stated, that he or she has read and verified the accuracy of all points of law cited in the brief, and that he or she is not aware of any contrary authority not cited to in the brief or substantially addressed by the contrary authority cited to in the brief.

3. **Format.** Any *amicus* brief submitted to the Chief Clerk for Military Commissions shall comport with the following:

a. The brief must be in PDF (Adobe Acrobat) format as an attachment to the email submitting the brief to the Chief Clerk for Military Commissions.

b. The brief, when printed, will contain one inch margins on 8 1/2 x 11 paper and be in a 12 point type face. The brief will be double-spaced and may not exceed 25 pages.

c. The brief may use URLs (web links) as cites to legal authority not generally available through legal research services such as LEXIS or WestLaw. URL matters are not part of the brief, and the brief will be rejected by the Chief Clerk for Military Commissions or the Presiding Officer, if URL matters are viewed as an attempt to exceed page limitations. Parties submitting briefs are responsible for insuring that the URL is functional on the date of submission.

d. The brief must follow the format set forth in the enclosure to this memorandum.

4. Action by the Chief Clerk for Military Commissions. When received by the Chief Clerk for Military Commissions, he or she shall:

a. Post a copy of the brief on the common, shared Office of Military Commissions network drive in a folder established for such purposes;

b. Send a copy to the Chief Defense Counsel and Chief Prosecutor who may, in turn, forward such briefs to counsel who do not have access to the Office of Military Commissions drive; and

c. Arrange for a copy to be posted to the DoD Commission's website.

5. Consideration by a Military Commission. An *amicus* brief may be considered by a Military Commission only if:

a. A filing (motion, response, or reply) by a party cites and endorses an *amicus* brief and a copy of the brief is appended to the motion filing;

b. The *amicus* brief cited is relevant to the issues being asserted in the filing; and,

c. The *amicus* brief, the certification, and its manner of submission meets the criteria in paragraphs 2 and 3 above.

The Presiding Officer may consider an *amicus* brief *sua sponte*, regardless of the provisions of this paragraph.

6. Other matters.

a. No person may argue an *amicus* brief before the Presiding Officer without specific, prior leave from the Presiding Officer. However, any party may invite the attention of the Presiding Officer to an *amicus* brief cited in the party's motion or response or in oral argument when such argument is permitted.

b. The submission, processing, and consideration of *amicus* briefs will not be allowed to delay the Commission.

c. No member of the Commission, except the Presiding Officer, may consider an *amicus* brief, and no party may argue an *amicus* brief before any member of the Commission except the Presiding Officer and then only in accordance with this memorandum.

7. Timeframe exceptions. If a significant *amicus* brief has been made available as provided in paragraph 4 after a party has filed a motion, response, or reply on the same or a substantially similar issue, and before the Presiding Officer has issued a ruling on the record or in writing, a party may request the Presiding Officer consider the *amicus* brief by:

a. Requesting in the body of an email that the Presiding Officer consider the brief and attaching the brief; *and*,

b. Stating those matters raised in the brief that were not considered or known before all filings were due.

If the Presiding Officer agrees to consider the brief, the Presiding Officer may allow the opposing party to file a response; if so, the Presiding Officer will advise the opposing party of the time limit. As a general rule, no reply to that response will be permitted. No adverse inferences will be drawn from an election by the opposing party not to respond to an *amicus* brief.

/s/

Peter E. Brownback III
COL, JA, USA
Chief Presiding Officer

Enclosure 1 to POM # 19, Format for an Amicus Brief

UNITED STATES v. (Name of Accused)

**BEFORE A MILITARY COMMISSION
CONVENED PURSUANT TO THE
PRESIDENT'S MILITARY ORDER OF
NOVEMBER 13, 2001**

*(Date brief is sent to the Chief Clerk for Military
Commissions)*

*Amicus Brief filed by
(person filing the brief)
[on behalf of (if applicable, indicate the entity on
whose behalf the brief is submitted)]*

NOTE: The following will be included in separately numbered paragraphs. Use Arabic numbers. Sub paragraphs will be numbered or lettered.

1. (Required in every brief.). My name is _____. I certify that I am licensed to practice before the (state jurisdiction). I further certify:

a. I am not a party to any Commission case in any capacity, I do not have an attorney-client relationship with any person whose case has been referred to a Military Commission under the President's Military Order of November 13, 2001, I am not currently nor I am seeking to be habeas counsel for any such person, and I not currently or nor am I seeking to be next-friend for such person. **OR,**

b. I am (describe the condition listed in paragraph 1a above and the specific individual case involved) and I further state the submission is only to be considered for its value as an *amicus* brief and not for any other purpose to include as a brief on behalf of any specific party to any Commission proceeding.

c. I certify my good faith belief as a licensed attorney that the law in the attached brief is accurately stated, that I have read and verified the accuracy of all points of law cited in the brief, and that I am not aware of any contrary authority not cited to in the brief or substantially addressed by the contrary authority cited to in the brief.

2. Issue(s) Presented. [Set forth, in a concise statement, each issue presented.]

3. **Statement of Facts.** [Set forth accurately all facts pertinent to the issues raised.]

4. **The law.**

5. **Argument.** (Optional.)

Signature Block

Office Address

Email Address

Phone Number